

**Roberg-Perez Decl. Ex. F**

**March 7, 2011**

**Best Buy's Opposition to Plaintiffs'  
Preliminary Injunction Motion**

Erik Andersen - 10/29/2010  
Software Freedom Conservancy, Inc., et al. vs. Best Buy Co., Inc., et al.

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IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK  
09-CV-10155 (SAS)

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SOFTWARE FREEDOM CONSERVANCY, INC.

and ERIK ANDERSEN,

Plaintiffs,

-against-

BEST BUY CO., INC., SAMSUNG

ELECTRONICS AMERICA, INC.,

WESTINGHOUSE DIGITAL ELECTRONICS,

LLC, JVC AMERICAS CORPORATION,

WESTERN DIGITAL TECHNOLOGIES, INC.,

ROBERT BOSCH LLC, PHOEBE MICRO, INC.,

HUMAX USA, INC., COMTREND CORPORATION,

DOBBS-STANFORD CORPORATION, VERSA

TECHNOLOGY, INC., ZYXEL COMMUNICATIONS,

INC., ASTAK, INC. and GCI TECHNOLOGIES

CORPORATION,

Defendants  
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**CERTIFIED  
TRANSCRIPT**

VIDEOTAPED DEPOSITION OF ERIK ANDERSEN

New York, New York

Friday, October 29, 2010

Reported by:

Amy A. Rivera, CSR, RPR, CLR

JOB NO. 25509

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<p>1 Lineo?</p> <p>2 <b>A. Yes, I see that.</b></p> <p>3 Q. And is that description accurate?</p> <p>4 MR. RAVICHER: Objection.</p> <p>5 Is what description?</p> <p>6 Q. Is the title, "Senior software</p> <p>7 developer" at Lineo accurate?</p> <p>8 <b>A. Yes, I believe that that was the</b></p> <p>9 <b>official title that I was given.</b></p> <p>10 Q. And are the dates August 1999 to</p> <p>11 September 2001 accurate dates as to your</p> <p>12 affiliation with Lineo?</p> <p>13 <b>A. Yes, that I believe is correct.</b></p> <p>14 <b>And it's kind of ironic. I was -- as</b></p> <p>15 <b>they ran into some financial trouble, I was let go</b></p> <p>16 <b>one week before September 11, 2001. So ...</b></p> <p>17 Q. Directing your attention back to Erik</p> <p>18 Andersen's home page on Page 2.</p> <p>19 <b>A. Okay.</b></p> <p>20 Q. Toward the top of that page, do you</p> <p>21 see that there is reference to you leaving</p> <p>22 employment at Lineo on September 7th, 2001?</p> <p>23 <b>A. Yes, I see that.</b></p> <p>24 Q. So that --</p> <p>25 <b>A. So, I suppose it wasn't precisely one</b></p>	<p>1 "Embedix" is spelled E-M-B-E-D-I-X.</p> <p>2 Q. Mr. Andersen, did I read that</p> <p>3 correctly?</p> <p>4 MR. RAVICHER: Counsel, do you mind</p> <p>5 reading -- redirecting the witness?</p> <p>6 Q. Toward the top of Exhibit 2 --</p> <p>7 <b>A. Okay, okay. There we are.</b></p> <p>8 <b>Could you restate the question again</b></p> <p>9 <b>now that I found where we're --</b></p> <p>10 Q. Okay.</p> <p>11 You have in this resume indicated that</p> <p>12 you were "Team lead for developing Embedix Linux</p> <p>13 1.0."</p> <p>14 Did I read that correctly?</p> <p>15 <b>A. Yes, you did.</b></p> <p>16 Q. And is that an accurate description of</p> <p>17 some of what you did at Lineo?</p> <p>18 <b>A. That -- yes.</b></p> <p>19 Q. You have also indicated a number of</p> <p>20 other responsibilities that you had while you were</p> <p>21 at Lineo in this resume, correct?</p> <p>22 <b>A. That's right.</b></p> <p>23 Q. And one of these responsibilities that</p> <p>24 is identified on this resume is "Maintainer and</p> <p>25 developer of BusyBox," correct?</p>
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<p>1 week before, it was less than a week before.</p> <p>2 Q. To the best of your recollection, is</p> <p>3 that the date that you left employment at Lineo?</p> <p>4 <b>A. I imagine it must be.</b></p> <p>5 Q. Okay.</p> <p>6 You mentioned that Lineo was a</p> <p>7 business for embedded Linux?</p> <p>8 <b>A. That is correct. That was the reason</b></p> <p>9 <b>for which the business was -- was -- the market</b></p> <p>10 <b>that that business was hoping to target.</b></p> <p>11 Q. Does Lineo still exist?</p> <p>12 <b>A. I have no knowledge of whether some</b></p> <p>13 <b>derivative or successor or whatever may or may not</b></p> <p>14 <b>still exist.</b></p> <p>15 <b>The way of businesses, or -- who</b></p> <p>16 <b>knows, somebody might own the leftovers.</b></p> <p>17 Q. And is it your testimony that you have</p> <p>18 no knowledge of who might own the leftovers?</p> <p>19 <b>A. I have no knowledge.</b></p> <p>20 Q. Okay.</p> <p>21 Going back to your resume, and looking</p> <p>22 at the entry for your work at Lineo, you have</p> <p>23 written, "Team lead for developing Embedix Linux</p> <p>24 1.0."</p> <p>25 MR. RAVICHER: For the record,</p>	<p>1 MR. RAVICHER: For the record, the</p> <p>2 statement is "Maintainer and developer of</p> <p>3 BusyBox (<a href="http://busybox.lineo.com">http://busybox.lineo.com</a>)."</p> <p>4 BY MS. ROBERG-PEREZ:</p> <p>5 Q. Did -- my question is: Did you</p> <p>6 maintain and develop BusyBox while you were at</p> <p>7 Lineo?</p> <p>8 MR. RAVICHER: Objection.</p> <p>9 MS. ROBERG-PEREZ: I'll rephrase.</p> <p>10 Q. Does this resume state, "Maintainer</p> <p>11 and developer of BusyBox"?</p> <p>12 <b>A. Yes, it does.</b></p> <p>13 Q. And is that accurate?</p> <p>14 MR. RAVICHER: Objection.</p> <p>15 The document says, "BusyBox" parens,</p> <p>16 again, "<a href="http://busybox.lineo.com">http://busybox.lineo.com</a>)."</p> <p>17 Q. With that qualification, is that</p> <p>18 statement accurate?</p> <p>19 <b>A. Yes.</b></p> <p>20 Q. Okay.</p> <p>21 MS. ROBERG-PEREZ: I'm going to ask</p> <p>22 the reporter to hand you a copy of the</p> <p>23 complaint in this action that will be marked</p> <p>24 as Exhibit 3.</p> <p>25 (Exhibit Andersen 3, the complaint,</p>

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<p>1 copyright in Version 0.60.3, correct?</p> <p>2 <b>A. 0.60.3, yes, that is the version</b></p> <p>3 <b>number --</b></p> <p>4 Q. Okay.</p> <p>5 <b>A. -- on the registration.</b></p> <p>6 <b>MS. ROBERG-PEREZ: Handing you a</b></p> <p>7 <b>document that I'd like the reporter to mark</b></p> <p>8 <b>as Exhibit 12.</b></p> <p>9 <b>(Exhibit Andersen 12, a copy of a web</b></p> <p>10 <b>page entitled, "Index of downloads," was</b></p> <p>11 <b>marked for identification at this time.)</b></p> <p>12 MR. RAVICHER: Take your time and</p> <p>13 review it.</p> <p>14 When we get to a stopping point, I'd</p> <p>15 appreciate it. I have a small bladder.</p> <p>16 MS. ROBERG-PEREZ: Okay.</p> <p>17 MR. RAVICHER: Thank you very much.</p> <p>18 (Pause.)</p> <p>19 <b>A. Okay.</b></p> <p>20 Q. I've handed you a copy of a web page,</p> <p>21 five-page printout. The title is: "Index of</p> <p>22 downloads."</p> <p>23 Do you see that?</p> <p>24 <b>A. Yes, I see that.</b></p> <p>25 Q. And at the bottom of the printout,</p>	<p>1 BY MS. ROBERG-PEREZ:</p> <p>2 Q. Mr. Andersen, directing your attention</p> <p>3 to the link "BusyBox-0.60.3.tar.bz2," do you see</p> <p>4 that there was a last-modified date, April 27th,</p> <p>5 2002?</p> <p>6 <b>A. Yes, I see that.</b></p> <p>7 Q. Do you have an understanding of what</p> <p>8 the last-modified date means?</p> <p>9 <b>A. Yes.</b></p> <p>10 Q. What does that date mean?</p> <p>11 <b>A. That's the date on which that file</b></p> <p>12 <b>was -- was -- was last changed or modified, and --</b></p> <p>13 <b>and, presumably, it corresponds to the last time</b></p> <p>14 <b>anything in that file was changed.</b></p> <p>15 Q. And do you recognize -- let me back up</p> <p>16 a bit.</p> <p>17 At one point in time, you were a</p> <p>18 BusyBox maintainer, correct?</p> <p>19 <b>A. That is correct.</b></p> <p>20 Q. And were you a maintainer on</p> <p>21 April 27th, 2002?</p> <p>22 <b>A. Yes, I was.</b></p> <p>23 Q. And were you responsible for releasing</p> <p>24 BusyBox Version 0.60.3?</p> <p>25 <b>A. I was responsible for releasing</b></p>
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<p>1 there is an address:</p> <p>2 "Http:\\busybox.net\\downloads\\."</p> <p>3 Did I read that correctly?</p> <p>4 <b>A. I believe that's actually a forward</b></p> <p>5 <b>slash, but that's okay.</b></p> <p>6 Q. Forward slash.</p> <p>7 With that correction, did I read that</p> <p>8 correctly?</p> <p>9 <b>A. Yes.</b></p> <p>10 Q. Do you recognize this web page?</p> <p>11 <b>A. It appears to be a copy of the BusyBox</b></p> <p>12 <b>downloads that are available on busybox.net.</b></p> <p>13 Q. And what downloads are available on</p> <p>14 busybox.net?</p> <p>15 <b>A. Various versions of BusyBox dating</b></p> <p>16 <b>back to the 0.60.3 release, and versions then</b></p> <p>17 <b>after that.</b></p> <p>18 Q. Directing your attention to the 0.60.3</p> <p>19 link on the first page, do you see that there is a</p> <p>20 last-modified date, April 27th, 2002?</p> <p>21 MR. RAVICHER: Objection.</p> <p>22 Just for clarification, there are two</p> <p>23 BusyBox-0.60.3 files. One's ".tar" --</p> <p>24 T-A-R -- ".bz2." The other one is</p> <p>25 ".tar.bz2.sign."</p>	<p>1 <b>BusyBox 0.60.3.</b></p> <p>2 Q. Were you responsible for releasing</p> <p>3 documentation in connection with that code as</p> <p>4 well?</p> <p>5 <b>A. I created documentation with -- at</b></p> <p>6 <b>that time, yes.</b></p> <p>7 Q. And do you know if documents that we</p> <p>8 downloaded from this page would be true and</p> <p>9 accurate copies of the indicated source code?</p> <p>10 <b>A. I presume that they are.</b></p> <p>11 Q. Do you have any reason to believe that</p> <p>12 those copies would not be accurate?</p> <p>13 <b>A. I believe I -- the dot sign file is --</b></p> <p>14 <b>contains cryptographic signature intended to</b></p> <p>15 <b>confirm that nobody's changed or modified it.</b></p> <p>16 Q. Okay.</p> <p>17 Do you have any reason to believe that</p> <p>18 the documentation in connection with the code that</p> <p>19 is downloadable from these links would not be true</p> <p>20 and accurate copies of the documentation?</p> <p>21 <b>A. I have no reason to know one way or</b></p> <p>22 <b>the other whether the -- that that's true or</b></p> <p>23 <b>accurate or not.</b></p> <p>24 <b>I -- I would have to check it and see</b></p> <p>25 <b>if it had changed, or something, but I presume</b></p>

20 (Pages 74 to 77)

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<p>1 and John Beppu and Mark Whitley, working on  2 BusyBox while -- while working at Lineo?  3 MR. RAVICHER: Objection.  4 Q. You may answer.  5 A. I have no recollection of -- I -- I  6 don't recall.  7 Q. If you know, where is John Beppu now?  8 A. I have no idea.  9 After the -- after John Beppu was -- I  10 believe he was -- either quit or laid off, I  11 entirely lost contact with him.  12 Q. If you know, where is Mark Whitley  13 now?  14 A. I know Mark Whitley. He continues  15 to -- he lives in the Greater Salt Lake City area.  16 I believe it is in West Valley City.  17 And he -- last I had heard, he was  18 working doing software development for like --  19 like a bank or an insurance company, or some such  20 thing.  21 Q. Okay.  22 I'd like to switch gears a little bit.  23 You've previously acknowledged that  24 Lineo has a copyright in BusyBox, correct?  25 MR. RAVICHER: Objection.</p>	<p>1 Q. And it's the same copyright marking  2 that you attached to the source code?  3 A. Could you restate that again?  4 Q. Is this a copyright notice or marking  5 that you attached or marked --  6 MR. RAVICHER: Objection.  7 Q. -- the source code with?  8 MR. RAVICHER: It's a little ambiguous  9 which copyright marking.  10 A. Yeah, if you could clarify --  11 Q. Okay.  12 A. -- precisely what you're -- you're  13 asking, then I could.  14 MS. ROBERG-PEREZ: Okay. Let's strike  15 that question.  16 I'd like the reporter to hand you what  17 will be marked as Exhibit 15.  18 (Exhibit Andersen 15, a document  19 identified as TOC ID 14465, was marked for  20 identification at this time.)  21 (Pause.)  22 A. Okay.  23 MR. RAVICHER: Do you mind, Counsel, a  24 few more moments.  25 THE WITNESS: Sure.</p>
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<p>1 BY MS. ROBERG-PEREZ:  2 Q. You may answer.  3 A. For -- while I was working there, it  4 was my hope to foster the development of BusyBox,  5 and it was my hope to further the interests of my  6 employer.  7 And, so, we -- I asked for and  8 obtained permission to create websites hosted by  9 Lineo, such as opensource.lineo.com, for the  10 purpose of promoting -- promoting embedded Linux  11 and promoting BusyBox.  12 And they also requested that I mark a  13 copyright notice in the -- the -- those releases  14 of BusyBox.  15 Q. So, my answer is, correct, you have  16 previously acknowledged that Lineo has a  17 copyright --  18 MR. RAVICHER: Objection.  19 Q. -- in BusyBox, correct?  20 You may answer it.  21 A. There was never a registered copyright  22 that was registered with the copyright office.  23 However, it was marked in the source code that --  24 that they had a -- that they had claimed some  25 copyright in it.</p>	<p>1 (Pause.)  2 MR. RAVICHER: Thank you.  3 BY MS. ROBERG-PEREZ:  4 Q. Handed you a two-page document.  5 There is a unique TOC ID number on the  6 bottom left: 14465.  7 Do you see that?  8 A. Yes.  9 Q. Do you see that this is an e-mail  10 exchange?  11 At the top of the first page, this is  12 from you, correct?  13 A. Yes, it is.  14 Q. To Dave Cinege?  15 A. Yes.  16 Q. Dated November 9th, 1999?  17 A. So it seems --  18 Q. Is this --  19 A. -- yes.  20 Q. -- is this a copy of the e-mail that  21 you sent?  22 A. Appears to be, yes.  23 Q. And looking at the top of this page,  24 there is an e-mail that Dave Cinege had written to  25 you, second paragraph: "In most files, you've</p>

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<p>1 made changes in I see only copyright 1999 by</p> <p>2 Lineo, Inc."</p> <p>3 Did I read that correctly?</p> <p>4 <b>A. Yes.</b></p> <p>5 Q. Drawing your attention to the first</p> <p>6 paragraph, about the middle of the page, do you</p> <p>7 see that you have written back to Dave: "As for</p> <p>8 the Lineo copyright, Lineo asked me to put that on</p> <p>9 the stuff they paid me to work on. Since it is</p> <p>10 their money, that is their right."</p> <p>11 Did I read that correctly?</p> <p>12 <b>A. Yes.</b></p> <p>13 Q. Is that something that you wrote?</p> <p>14 <b>A. It appears to be, yes.</b></p> <p>15 Q. Is that something that is accurate?</p> <p>16 MR. RAVICHER: Objection.</p> <p>17 <b>A. I don't recall the accuracy of what</b></p> <p>18 <b>they asked me to do or not do at this point.</b></p> <p>19 Q. But you agree that this is something</p> <p>20 you wrote in November of 1999?</p> <p>21 MR. RAVICHER: Asked and answered.</p> <p>22 Q. You may answer it.</p> <p>23 <b>A. Yes.</b></p> <p>24 Q. Okay.</p> <p>25 MR. RAVICHER: Just off the record</p>	<p>1 Thank you.</p> <p>2 BY MS. ROBERG-PEREZ:</p> <p>3 Q. Mr. Andersen --</p> <p>4 <b>A. Yes.</b></p> <p>5 Q. -- are you ready to -- to answer</p> <p>6 questions about this document?</p> <p>7 <b>A. I believe I am.</b></p> <p>8 Q. Looking at the first page of the</p> <p>9 document at the top of the page, do you see</p> <p>10 there's reference to BusyBox Version 0.46?</p> <p>11 <b>A. Yes, I see that reference.</b></p> <p>12 Q. And do you see that the date on this</p> <p>13 document appears to be July 2000, July 7th, 2000?</p> <p>14 <b>A. Well, I'm looking at what appears to</b></p> <p>15 <b>be a -- a diff, and it appears to be a diff</b></p> <p>16 <b>between the year 2000 and the -- presumably, the</b></p> <p>17 <b>beginning of the UNIX epoch at 1969.</b></p> <p>18 MR. RAVICHER: And just for</p> <p>19 clarification for the record, the first line</p> <p>20 of this document is</p> <p>21 "diff-uNbusybox-0.46-orig/AUTHORS busybox-0_</p> <p>22 46/AUTHORS."</p> <p>23 Q. Mr. Andersen, do you recognize what</p> <p>24 this document is?</p> <p>25 <b>A. Well, it appears to be a diff that was</b></p>
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<p>1 real quickly.</p> <p>2 (Discussion off the record.)</p> <p>3 MS. ROBERG-PEREZ: Perhaps going off</p> <p>4 the record for a three-minute break.</p> <p>5 MR. RAVICHER: Okay.</p> <p>6 VIDEOGRAPHER: Going off the record at</p> <p>7 11:19 a.m.</p> <p>8 (Recess.)</p> <p>9 VIDEOGRAPHER: Going back on the</p> <p>10 record at 11:24 a.m.</p> <p>11 BY MS. ROBERG-PEREZ:</p> <p>12 Q. Mr. Andersen, I'd like the reporter to</p> <p>13 hand you what will be marked as Exhibit 16.</p> <p>14 (Exhibit Andersen 16, a group of</p> <p>15 e-mails, was marked for identification at this</p> <p>16 time.)</p> <p>17 MR. RAVICHER: Please take your time</p> <p>18 and review the document completely.</p> <p>19 (Pause.)</p> <p>20 <b>A. Sometimes amuse myself, even after so</b></p> <p>21 <b>many years.</b></p> <p>22 Q. Mr. Andersen, do I take that that you</p> <p>23 are ready to answer questions about the document?</p> <p>24 MR. RAVICHER: Counsel, if I can have</p> <p>25 just a few for moments, please?</p>	<p>1 generated -- some kind of document, presumably,</p> <p>2 from BusyBox 0.46.</p> <p>3 Q. What is a "Diff"?</p> <p>4 <b>A. A diff is both a UNIX utility and the</b></p> <p>5 <b>output from that utility which generates a set of</b></p> <p>6 <b>differences between one text file and another text</b></p> <p>7 <b>file.</b></p> <p>8 Q. Is this a document that you created or</p> <p>9 generated?</p> <p>10 <b>A. I'm not sure where the diff came from</b></p> <p>11 <b>or how that was created, but it appears to be a --</b></p> <p>12 <b>a diff that is removing stuff from a file, and I'm</b></p> <p>13 <b>not sure who created the diff or why.</b></p> <p>14 Q. Okay.</p> <p>15 <b>A. But the original content that the diff</b></p> <p>16 <b>was -- was created against appears to have come</b></p> <p>17 <b>from me.</b></p> <p>18 <b>So, at some point -- you know, so,</b></p> <p>19 <b>this is a derivative of something that I've</b></p> <p>20 <b>created.</b></p> <p>21 Q. Is it your testimony that you would</p> <p>22 recognize original content from you that is in</p> <p>23 this document even though you may not know who</p> <p>24 created the diff?</p> <p>25 MR. RAVICHER: Objection.</p>

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1 Directing your attention back to  
2 Exhibit 18.  
3 You see that this is a document  
4 entitled, at the top, "License."  
5 **A. Yes, I see that it states that.**  
6 Q. Do you see that, part way down the  
7 page, there's reference to "Tons of new stuff as  
8 noted in header files"?  
9 **A. Yes, I see that.**  
10 Q. "Copyright 1999, 2000, 2001, by Lineo  
11 Inc. and written with Erik Andersen."  
12 Do you see that?  
13 **A. Yes, I see that.**  
14 Q. As maintainer of BusyBox in  
15 August 23rd of 2001, would you have been  
16 responsible for the content of any license file  
17 that was released when Version 0.60.1 was  
18 released?  
19 **A. Yes, I believe I would be.**  
20 Q. And do you have any reason to believe  
21 that this is not the license file that was  
22 released with Version 0.60.1?  
23 **A. I have no reason to know one way or**  
24 **the other. I would have to double-check it myself**  
25 **to confirm, but it's plausible that this is it.**

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1 Q. Okay.  
2 MS. ROBERG-PEREZ: Asking the reporter  
3 to hand you what will be marked as Exhibit  
4 19.  
5 (Exhibit Andersen 19, a document  
6 identified as TOC ID 13626, was marked for  
7 identification at this time.)  
8 MS. ROBERG-PEREZ: Going off the  
9 record.  
10 We'd like to change the tape now.  
11 VIDEOGRAPHER: We're going off the  
12 record at 11:42 a.m.  
13 (Recess.)  
14 VIDEOGRAPHER: We're going back on the  
15 record at 11:43 a.m.  
16 BY MS. ROBERG-PEREZ:  
17 Q. Mr. Andersen, Exhibit 19 has a unique  
18 TOC identifier on the bottom left, 13626.  
19 Do you see that?  
20 **A. Yes, I see that.**  
21 Q. Do you see that this appears to be an  
22 e-mail from tbird@flint.lineo.com.  
23 Do you see that?  
24 **A. Yes, I see that.**  
25 Q. Do you see from the footer at the

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1 bottom that this appears to be an e-mail from Tim  
2 Bird?  
3 **A. That is what it seems to be.**  
4 Q. And that it's dated June 9th, 2000?  
5 **A. Yep.**  
6 Q. And that it is to Doug Brockbank?  
7 **A. Yes.**  
8 Q. Do you know who Doug Brockbank is?  
9 **A. I recall him. I do not recall off the**  
10 **top of my head precisely what his position was.**  
11 Q. Did he work at Lineo?  
12 **A. But he did work at Lineo.**  
13 Q. Do you see that this e-mail -- in this  
14 e-mail, Tim states: "Doug, here's a list of major  
15 open-source contributions made by Lineo, et al.?"  
16 **A. Yes, I see that that's what this**  
17 **e-mail says.**  
18 Q. And then at the bottom of the e-mail,  
19 it says: "For PopTop, uClinux, ThinLinux,  
20 BusyBox, and TinyLogin, these are open-source  
21 projects where we are the owners that are the  
22 leaders and primary contributors to the project."  
23 Do you see that?  
24 MR. RAVICHER: Objection.  
25 The e-mail puts the word "Owners" in

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1 quotes. The word "Owners" is not left by  
2 itself. It -- it is surrounded by quotes.  
3 BY MS. ROBERG-PEREZ:  
4 Q. With that correction, did I read those  
5 two sentences at the bottom of this e-mail  
6 correctly?  
7 **A. Yes --**  
8 Q. Okay.  
9 **A. -- that is what this appears to say.**  
10 **MS. ROBERG-PEREZ: I'd like the**  
11 **reporter to hand you what will be marked as**  
12 **Exhibit 20.**  
13 **(Exhibit Andersen 20, a document**  
14 **identified as TOC ID 3836, was marked for**  
15 **identification at this time.)**  
16 **(Pause.)**  
17 **A. Okay.**  
18 MR. RAVICHER: If I could have a  
19 moment with this?  
20 THE WITNESS: Certainly.  
21 (Pause.)  
22 MR. RAVICHER: Thank you.  
23 Q. Mr. Andersen, do see that this is a  
24 two-page document with the unique Toc identifier  
25 in the bottom left, 3836?

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<p>1 Q. Did you receive legal assignment of</p> <p>2 copyright from any BusyBox contributor?</p> <p>3 A. To the best of my knowledge, no.</p> <p>4 Q. Okay.</p> <p>5 A. Some people may have chosen to submit</p> <p>6 their stuff under public domain, but I do not</p> <p>7 believe that there was ever a legal document of</p> <p>8 formal assignment of copyright.</p> <p>9 MS. ROBERG-PEREZ: I'll ask the</p> <p>10 reporter to hand you what will be marked as</p> <p>11 Exhibit 22.</p> <p>12 (Exhibit Andersen 22, a document</p> <p>13 identified as TOC ID 12947, was marked for</p> <p>14 identification at this time.)</p> <p>15 A. Okay.</p> <p>16 Q. Do you see this is two-page document</p> <p>17 with the unique identifier on the bottom left, TOC</p> <p>18 12947?</p> <p>19 A. Yes, I see that.</p> <p>20 Q. And at the top of this e-mail chain,</p> <p>21 there's an e-mail from julie.weight@lineo.com to</p> <p>22 andersen@lineo.com?</p> <p>23 A. Yes, I see that.</p> <p>24 Q. And this is dated August 2nd, 2000,</p> <p>25 correct?</p>	<p>1 I suspect I was exaggerating the</p> <p>2 numbers at that point, but it was nonetheless some</p> <p>3 number of other people up to, but probably not</p> <p>4 exceeding 50.</p> <p>5 Q. Okay.</p> <p>6 That leads right into the next</p> <p>7 document we can talk about.</p> <p>8 MS. ROBERG-PEREZ: I'd like to ask the</p> <p>9 reporter to hand you what will be marked as</p> <p>10 Exhibit 23.</p> <p>11 (Exhibit Andersen 23, the author file</p> <p>12 for Version 0.60.3, was marked for</p> <p>13 identification at this time.)</p> <p>14 A. Okay.</p> <p>15 Q. I will represent to you that this is</p> <p>16 the author file for Version 0.60.3.</p> <p>17 You were the maintainer when Version</p> <p>18 0.60.3 was released, correct?</p> <p>19 A. That is correct.</p> <p>20 Q. The top of this document, do you see</p> <p>21 that it says: "List of the authors of code</p> <p>22 contained in BusyBox"?</p> <p>23 A. Yes, I see that.</p> <p>24 Q. And do you see that there are 26</p> <p>25 authors listed?</p>
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<p>1 A. Yes.</p> <p>2 Q. Is this an e-mail that you received?</p> <p>3 A. Yes.</p> <p>4 Q. Who is Julie Weight?</p> <p>5 A. Presumably, a paralegal and -- who was</p> <p>6 working for Lineo, Inc., as noted in the document.</p> <p>7 Q. Do you have any independent</p> <p>8 recollection of who she is?</p> <p>9 A. Not -- not really, no.</p> <p>10 Q. Okay.</p> <p>11 I'd like to direct your attention to</p> <p>12 the second page.</p> <p>13 About halfway down the page, you have</p> <p>14 written: "Software I am working on and/or</p> <p>15 maintaining for Lineo."</p> <p>16 Do you see that?</p> <p>17 A. Yes, I see that.</p> <p>18 Q. And do you see that you've identified</p> <p>19 BusyBox as one of the -- one of the software</p> <p>20 projects?</p> <p>21 A. Yes, I see that.</p> <p>22 Q. And do you see that under -- next to</p> <p>23 copyright, you've written: "Me and about 50 other</p> <p>24 people."</p> <p>25 A. Yes, I see that.</p>	<p>1 A. Would you like me to count them?</p> <p>2 Q. Certainly.</p> <p>3 A. It does indeed seem to be 26.</p> <p>4 Q. Did any of these other authors write</p> <p>5 code that is in Version 0.60.3 of BusyBox?</p> <p>6 A. I'm certain that that is the case.</p> <p>7 Q. Looking at the list, can you identify</p> <p>8 which of these authors those would be?</p> <p>9 A. Well, having written the list of</p> <p>10 authors, I'm certain that every one of these</p> <p>11 people has some contribution to some extent, small</p> <p>12 or large, that is incorporated into BusyBox</p> <p>13 0.60.3.</p> <p>14 Q. And just to be clear, when you say,</p> <p>15 "Contribution," do you mean that there is code --</p> <p>16 A. Yes.</p> <p>17 Q. -- that is incorporated into 0.60.3?</p> <p>18 A. Yes.</p> <p>19 Q. Okay.</p> <p>20 Did you -- when you registered your</p> <p>21 BusyBox copyright at the copyright office, did you</p> <p>22 tell the copyright office about the parts of the</p> <p>23 code that any of these other authors wrote?</p> <p>24 A. No.</p> <p>25 Q. Okay.</p>

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<p>1 A. No.</p> <p>2 Q. Has the sale of the -- any of the</p> <p>3 devices accused in this litigation had any impact</p> <p>4 on any of your businesses?</p> <p>5 MR. RAVICHER: Objection.</p> <p>6 Q. You may answer.</p> <p>7 A. The impact that this would have on my</p> <p>8 businesses would presumably be primarily limited</p> <p>9 in my particular case to the potential impact it</p> <p>10 might have upon my reputation within the software</p> <p>11 development community, my reputation and ability</p> <p>12 to derive consulting income associated with the</p> <p>13 software, and I suppose it might create a broader,</p> <p>14 chilling effect upon those performing similar</p> <p>15 services that are available for the same software.</p> <p>16 Q. Okay.</p> <p>17 Mr. Andersen, I'd like to talk about</p> <p>18 each of those things.</p> <p>19 You testified that it might have</p> <p>20 potential impact on your reputation.</p> <p>21 As you sit here today, are you aware</p> <p>22 of any impact that the sale of the accused devices</p> <p>23 has had on your reputation?</p> <p>24 A. Both my reputation and the reputation</p> <p>25 of GPLed software in general, those who are -- are</p>	<p>1 enhancing the software and creating customizations</p> <p>2 for companies that need it.</p> <p>3 Q. Okay.</p> <p>4 Well, let's unpack that a little bit.</p> <p>5 Can you tell me of specific instances</p> <p>6 in which your reputation specifically, not GPLed</p> <p>7 software, not the community, yours specifically,</p> <p>8 has been adversely affected because of the sale of</p> <p>9 any of the accused devices?</p> <p>10 A. Having not recently looked around the</p> <p>11 Internet of people who have been discussing Erik</p> <p>12 Andersen in connection with the particular accused</p> <p>13 devices, I am not personally aware of anyone who</p> <p>14 has discussed in particular the damage caused to</p> <p>15 err Rick Andersen, or who has in particular</p> <p>16 maligned me for specifically the Blu-ray players</p> <p>17 in question.</p> <p>18 Q. You also testified that the sale of</p> <p>19 the accused devices might encourage small firms to</p> <p>20 not comply with the GPL.</p> <p>21 As you sit here today, can you name</p> <p>22 any small firm, small company, any entity that,</p> <p>23 because of the sale of the accused devices, is now</p> <p>24 not complying with the GPL?</p> <p>25 A. I guess it goes to a general, broader</p>
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<p>1 considering professions, those who are in school</p> <p>2 studying computer science, those who are hobbyists</p> <p>3 who find enjoyment working with and modifying</p> <p>4 Linux devices, and skilled end users who wish to</p> <p>5 create their own alternative firmware for devices,</p> <p>6 all these people depend upon the freedom to modify</p> <p>7 and to update their own devices.</p> <p>8 When software is released in such a</p> <p>9 manner that it is not compliant with the GPL, and</p> <p>10 despite being GPLed software, it produces a</p> <p>11 general chilling effect on both my reputation and</p> <p>12 the community at large because it creates a</p> <p>13 perception that creating and developing software</p> <p>14 for Linux, or software licensed under the GPL, is</p> <p>15 a waste of time because other corporations will</p> <p>16 simply take your stuff and close it up without</p> <p>17 passing on the freedoms that they were given.</p> <p>18 That also has a tendency to encourage</p> <p>19 small firms to say, well, if Company A was able to</p> <p>20 get away with it, and they didn't have to comply,</p> <p>21 perhaps we don't have to comply either. And that</p> <p>22 creates a generally depressive perception in the</p> <p>23 marketplace and reduces the ability of individual</p> <p>24 consultants and consulting companies to then apply</p> <p>25 their trade and earn a living developing and</p>	<p>1 market perception. When you ask for a specific</p> <p>2 name, I cannot easily provide a specific name of a</p> <p>3 specific company who has through a broader</p> <p>4 perception decided that specifically because of</p> <p>5 the one -- of the infringing -- the alleged</p> <p>6 infringing devices has specifically decided that</p> <p>7 that was the one and only reason why they were</p> <p>8 going to try and release their own software that</p> <p>9 was G -- that was GPL licensed, and, yet, not</p> <p>10 specifically for that device, comply with the</p> <p>11 license solely on the basis of these particular</p> <p>12 devices.</p> <p>13 Q. Okay.</p> <p>14 Can I ask what is the basis of your</p> <p>15 general broader market perception belief?</p> <p>16 A. This is a general belief of mine that</p> <p>17 has developed over a number of years as I</p> <p>18 developed BusyBox, as I maintained BusyBox, as I</p> <p>19 saw the use of BusyBox blossom, and as it was</p> <p>20 incorporated into literally millions of devices.</p> <p>21 During that time, from -- as it was</p> <p>22 adopted throughout various market segments, I also</p> <p>23 saw it increasingly adopted and used in ways that</p> <p>24 were not compliant with the license and -- and my</p> <p>25 efforts initially, until I began working with my</p>

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<p>1 colleagues at the Conservancy and the Software  2 Freedom Law Center, my perception was that it was  3 widely perceived in the marketplace and -- that  4 people were able to, and companies were able to,  5 use the software and distribute products based on  6 the software without compliance with the license  7 with impunity.</p> <p>8 And that perception, and -- and the  9 growing prevalence of reports that I would receive  10 from end users of these devices would -- did, in  11 my mind, create the belief that this was a wide,  12 prevalent perception throughout the marketplace.</p> <p>13 Q. How prevalent?</p> <p>14 A. How prevalent?</p> <p>15 It was my perception that there were a  16 very large number of infringing devices being  17 shipped by a very large number of companies.</p> <p>18 My understanding is that -- that there  19 have been times when there are many hundreds of  20 devices, individual devices, that are -- have --  21 that have been reported to have potential  22 infringement, and that number is not getting  23 smaller.</p> <p>24 MR. RAVICHER: When we get to a  25 stopping point, if we could take a break, I</p>	<p>1 I understand that this is Mr. Wade  2 Barrier's experience.</p> <p>3 Do you personally have a similar  4 experience?</p> <p>5 A. I own, as an example, a Linksys --  6 several Linksys WRT54G wireless routers, and when  7 I initially purchased these routers, I was not  8 able to modify the software on it in order to --  9 to incorporate the functionality I wished.</p> <p>10 In collaboration with my colleagues,  11 we were able to obtain compliance from the vendor,  12 and I now have these Linksys routers which contain  13 customized versions of -- of the software that are  14 able to perform the needs that I had for these  15 devices in my own home network.</p> <p>16 Q. Do you have any other similar  17 experience?</p> <p>18 A. Nothing recent comes to mind.</p> <p>19 Q. Going farther back, do you have any  20 experience previously, that's not recent?</p> <p>21 A. I -- no.</p> <p>22 Q. And with respect to the Linksys  23 routers that you just testified to, those aren't  24 manufactured by Best Buy, are they?</p> <p>25 A. No.</p>
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<p>1 appreciate it.</p> <p>2 MS. ROBERG-PEREZ: Absolutely.</p> <p>3 Q. You mentioned getting reports from end  4 users.</p> <p>5 A. Yes.</p> <p>6 Q. Please name an end user that has  7 reported to you their concern.</p> <p>8 A. Down the street from me there was a  9 man by the name of Wade Barrier and Wade received  10 from the -- a DSL modem.</p> <p>11 This device apparently contained  12 BusyBox, and it did not suit his needs for his  13 local network. He wished to be able to assign  14 specific IP addresses to specific devices, and  15 this DSL modem lacked the ability to -- to perform  16 that function.</p> <p>17 Wade proceeded to write a patch for  18 BusyBox in order to incorporate the feature set  19 that he wished to have on his home network.  20 Unfortunately, because this device was an  21 infringing device, the necessary source code,  22 Makefiles, build scripts, et cetera, were lacking.  23 And, therefore, he was not able to modify his  24 device.</p> <p>25 Q. Okay.</p>	<p>1 Q. Those aren't sold by Best Buy, are  2 they?</p> <p>3 A. No.</p> <p>4 MR. RAVICHER: Objection.</p> <p>5 A. Well, I -- they might be, I don't  6 know.</p> <p>7 The ones I purchased were not sold by  8 Best Buy.</p> <p>9 Q. Okay.</p> <p>10 Those weren't manufactured with JVC,  11 were they?</p> <p>12 A. I would presume not.</p> <p>13 Q. Those weren't manufactured by Western  14 Digital, were they?</p> <p>15 A. No.</p> <p>16 Q. Okay.</p> <p>17 MS. ROBERG-PEREZ: There will be a  18 tape change in five minutes. Perhaps we can  19 take a ten-minute break now.</p> <p>20 Going off the record.</p> <p>21 VIDEOGRAPHER: Going off the record at  22 2:20 p.m.</p> <p>23 (Recess.)</p> <p>24 VIDEOGRAPHER: This marks the start of  25 Tape No. 5.</p>

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<p>1 We're going back on the record at</p> <p>2 2:36 p.m.</p> <p>3 BY MS. ROBERG-PEREZ:</p> <p>4 Q. Mr. Andersen, before our break, you</p> <p>5 spoke about not recently looking around the</p> <p>6 Internet now for information or postings about --</p> <p>7 about your reputation.</p> <p>8 Aside from Internet postings, do you</p> <p>9 have any other awareness of any way in which your</p> <p>10 reputation has been harmed because of the sale of</p> <p>11 the accused devices?</p> <p>12 A. Because of the sale of these specific</p> <p>13 accused devices, I have no knowledge.</p> <p>14 Q. Okay.</p> <p>15 I'd like to ask if you have any</p> <p>16 concrete examples of how you have lost business</p> <p>17 because of the sale of the accused devices?</p> <p>18 We can start with Perlustro --</p> <p>19 Perlustro: Are you aware of any business that</p> <p>20 Perlustro has lost because of the sale of the</p> <p>21 accused devices?</p> <p>22 A. No, both Perlustro and Extreme</p> <p>23 Forensics and Andersen Forensics are really</p> <p>24 entirely orthogonal. They have nothing -- no</p> <p>25 correlation with -- with the -- the software in</p>	<p>1 that you wrote, has it?</p> <p>2 MR. RAVICHER: Objection.</p> <p>3 Q. You may answer.</p> <p>4 A. I have no ability to speculate as to</p> <p>5 what other people may or may not have done.</p> <p>6 Q. So, your only answer would be</p> <p>7 speculative, so you can't say, correct?</p> <p>8 A. That is correct.</p> <p>9 Q. Okay.</p> <p>10 Are you aware of alternatives to</p> <p>11 BusyBox code generally?</p> <p>12 A. I believe that there probably exists</p> <p>13 alternatives. People are more than welcome to --</p> <p>14 to use alternative operating systems. They are</p> <p>15 also perfectly able to go and use other source</p> <p>16 code on Linux.</p> <p>17 So, for example, if someone did not</p> <p>18 wish to use BusyBox, they could download Verio and</p> <p>19 compile for themselves various other GPLed</p> <p>20 software available from the GNU and other sources</p> <p>21 that could, you know, when properly compiled up,</p> <p>22 replace BusyBox, although, obviously, it would</p> <p>23 incur quite a bit more size and space as far as</p> <p>24 the storage required and the memory required to</p> <p>25 run those -- those other utilities.</p>
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<p>1 question, so ...</p> <p>2 Q. So, the answer is, you're not aware of</p> <p>3 any loss of business?</p> <p>4 A. That's correct.</p> <p>5 Q. Okay.</p> <p>6 Are you -- can you give me a concrete</p> <p>7 example of any business that CodePoet Consulting</p> <p>8 has lost because of the sale of the accused</p> <p>9 devices?</p> <p>10 A. I cannot give you a specific example</p> <p>11 of any business that has been lost by CodePoet</p> <p>12 Consulting.</p> <p>13 Q. Okay.</p> <p>14 Anyone who wants access to the BusyBox</p> <p>15 code that you registered at the copyright office</p> <p>16 has access to that code today, correct?</p> <p>17 A. Yes, that is correct.</p> <p>18 Q. That code can be downloaded from an</p> <p>19 online repository, correct?</p> <p>20 A. That is correct.</p> <p>21 Q. And the sale of the accused devices</p> <p>22 has not changed that, has it?</p> <p>23 A. It has not -- not changed that, no.</p> <p>24 Q. The sale of the accused devices hasn't</p> <p>25 decreased the number of people using BusyBox code</p>	<p>1 Q. Aside from other GPLed software, are</p> <p>2 you aware of any other alternatives to BusyBox</p> <p>3 code?</p> <p>4 A. Certainly, there are commercial</p> <p>5 realtime operating systems that people are able to</p> <p>6 purchase, and one would have to speak to those</p> <p>7 other vendors of other realtime operating systems</p> <p>8 or embedded operating systems to see what</p> <p>9 alternatives they had that may or may not be a,</p> <p>10 you know, direct correlation.</p> <p>11 Q. Okay.</p> <p>12 And aside from other GPLed code and</p> <p>13 commercial code, are you aware of any other code</p> <p>14 that perhaps is open source, just not GPLed that</p> <p>15 would serve or could serve as an alternative to</p> <p>16 BusyBox?</p> <p>17 A. There might be pieces and parts</p> <p>18 that -- but I am not aware of anything that, as an</p> <p>19 aggregate, is able to wholly replace all</p> <p>20 functionality of BusyBox that is available under</p> <p>21 other license terms, but my awareness of such</p> <p>22 things doesn't mean that they don't exist or not</p> <p>23 exist.</p> <p>24 Q. And you did testify that there may be</p> <p>25 pieces and parts, correct?</p>

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